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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT		ATTY. DOCKET NO.
08/[illegible]50	12/13/96	CHATTERTON	M	34[illegible]0321

18M1/1003

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EXAMINER	
SCHWADRON, R	
ART UNIT	**PAPER NUMBER**
1816	7

DATE MAILED: 10/03/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Ø month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-58 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☐ Claim(s) _____ is/are rejected.
☐ Claim(s) _____ is/are objected to.
☒ Claim(s) 1-58 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.
☐ received in Application No. (Series Code/Serial Number) _____.
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

15. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-5,20-26,35-37,39,40,42,43,54-56 are drawn to an antibody, hybridoma, peptides derived from said antibody, vaccines or compositions containing said antibody or peptide and kits, classified in Class 530, subclasses 387.2 and 387.1, Class 435, subclasses 327 and 975, and Class 424, subclass 131.1 and 133.1.

II. Claims 6-19,38,41,44,45,57,58 are drawn to polynucleotides, vectors containing said polynucleotides, host cells containing said vectors and polynucleotide kits, classified in Class 536, subclass 23.53, and Class 435, subclasses 320.1 and 325.

III. Claims 27-34 are drawn to fusion proteins, classified in Class 530, subclass 402.

IV. Claims 46-48,53 are drawn to a method of eliciting an immune response, classified in Class 435, subclass 155.1.

V. Claim 49 is drawn to a method of removing a labelled antibody from an individual, classified in Class 424, subclass 158.1.

VI. Claims 50-52 are drawn to a method of detection using an antibody, classified in Class 435, subclass 7.2.

16. Inventions I and IV/V/VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process such as for the immunopurification of the antigen which it binds.

17 Inventions II/III differ from inventions IV/V/VI in that the nucleic acids and fusion proteins of said inventions are not used in the method of inventions IV/V/VI. Therefore they are novel and unobvious in view of each other and are patentably distinct.

18. Inventions I,II and III are different products. Invention I is drawn to antibodies and related reagents, while invention II is drawn to a polynucleotides and vectors, while invention III is drawn to a fusion protein. These products are structurally different and have different art recognized

uses. The nucleic acids can be used in hybridization assays, while the antibody can be used in immunopurification procedures. The fusion protein of invention III differs from invention I in that it is drawn to a molecule that is physically and chemically distinct from invention I (eg. it can contain a lymphokine protein) and it can be used for purposes for which the claimed antibody cannot be used (eg. immunopurification of antilymphokine antibodies). Therefore they are novel and unobvious in view of each other and are patentably distinct.

19. Inventions IV, V and VI are different methods which use different reagents to achieve different goals. Invention VI encompasses in vitro assays, while inventions IV and V are drawn to in vivo methods. Invention IV is drawn to a method of eliciting an immune response while invention V is drawn to a method of removing a labelled antibody. The labelled antibody is not used in the method of invention IV. Therefore they are novel and unobvious in view of each other and are patentably distinct.

20. Because these inventions are distinct for the reasons given above and the search required for any group from Groups I-VI is not required for any other group from Groups I-VI and Groups I-VI have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.

21. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

22. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

23. Papers related to this application may be submitted to Group 180 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Papers should be faxed to Group 180 at

(703) 305-3014.

24. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Tuesday through Friday from 8:30 to 6:00. The examiner can also be reached on alternative Mondays. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ms Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 180 receptionist whose telephone number is (703) 308-0196.

RONALD B. SCHWADRON
PRIMARY EXAMINER
GROUP 1800

Ron Schwadron, Ph.D.
Primary Examiner
Art Unit 1816
October 1, 1997